

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA

|                                   |   |           |
|-----------------------------------|---|-----------|
| UNITED STATES OF AMERICA          | ) |           |
|                                   | ) |           |
| and                               | ) |           |
|                                   | ) |           |
| LOUISIANA DEPARTMENT OF           | ) |           |
| ENVIRONMENTAL QUALITY             | ) |           |
|                                   | ) |           |
| Plaintiffs,                       | ) |           |
|                                   | ) |           |
| v.                                | ) | Civil No. |
|                                   | ) |           |
| PCS NITROGEN FERTILIZER, L.P., AA | ) |           |
| SULFURIC CORP., and WHITE SPRINGS | ) |           |
| AGRICULTURAL CHEMICALS, INC.      | ) |           |
|                                   | ) |           |
| Defendants.                       | ) |           |
|                                   | ) |           |

**COMPLAINT**

Plaintiffs, the United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), and the Louisiana Department of Environmental Quality (“LDEQ”) file this Complaint and allege:

**NATURE OF THE ACTION**

1. This is a civil action brought against PCS Nitrogen Fertilizer, L.P. (“PCS”), AA Sulfuric Corporation (“AA Sulfuric”), and White Springs Agricultural Chemicals, Inc. (“White Springs”) pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), the Louisiana Environmental Quality Act, La.R.S. 30:2001 *et seq.*, and the regulations promulgated pursuant to those statutes. The United States and LDEQ seek injunctive relief and civil penalties for violations of: (a) the Clean Air Act’s Prevention of Significant Deterioration (“PSD”) provisions, 42 U.S.C. §§ 7470-7492, and the implementing federal regulations, (b) the Clean Air Act’s Title

V operating permit program, 42 U.S.C. §§ 7661-7661f, and the implementing federal regulations; and (c) the federally enforceable State Implementation Plans (“SIPs”) adopted by the States of Louisiana and Florida and approved by EPA pursuant to Section 110 of the Clean Air Act, 42 U.S.C. § 7410, that incorporate and implement the federal requirements listed above.

2. PCS, AA Sulfuric, and White Springs constructed and/or modified sulfuric acid manufacturing plants that they owned and operated in Florida and Louisiana without first obtaining appropriate Clean Air Act permits authorizing the construction and/or modification of the plants. In addition, PCS, AA Sulfuric, and White Springs failed to employ the best available control technology (BACT) to control emissions of sulfur dioxide (SO<sub>2</sub>) at these sulfuric acid manufacturing plants, as required by the Clean Air Act, applicable federal regulations, and the Louisiana and Florida SIPs. PCS, AA Sulfuric, and White Springs also failed to obtain Title V operating permits for these sulfuric acid manufacturing plants that include applicable requirements, including the requirement to comply with BACT emissions limits for SO<sub>2</sub>.

3. One of the sulfuric acid manufacturing plants is located in Geismar, Louisiana (the “Geismar Facility”). PCS operates the Geismar Facility and AA Sulfuric owns it. White Springs owns and operates four sulfuric acid manufacturing plants (Plants “C, D, E, and F”) located within the same overall facility in White Springs, Florida (the “White Springs Facility”).

4. These Clean Air Act violations resulted in thousands of tons of SO<sub>2</sub> being illegally emitted into the air in the States of Louisiana and Florida.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the subject matter of this action pursuant to Clean Air Act Section 113(b), 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

6. Venue is proper in this District pursuant to Clean Air Act Section 113(b), 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because violations alleged in this Complaint occurred in this District and the Geismar Facility is located in this District.

### **NOTICES**

7. On June 26, 2008, the United States provided notice of the violations alleged herein to PCS, to the State of Louisiana, and to the LDEQ pursuant to Clean Air Act Section 113(a), 42 U.S.C. § 7413(a).

8. On June 20, 2011, the United States provided notice of the violations alleged herein to AA Sulfuric, to the State of Louisiana, and to the LDEQ pursuant to Clean Air Act Section 113(a), 42 U.S.C. § 7413(a).

9. On May 7, 2012, the United States provided notice of the violations alleged herein to White Springs, the State of Florida, and the Florida Department of Environmental Protection (“FDEP”) pursuant to Clean Air Act Section 113(a), 42 U.S.C. § 7413(a).

10. The 30-day period established in Clean Air Act Section 113(a), 42 U.S.C. § 7413(a), between the notice of violation provided by the United States and the commencement of this civil action has elapsed.

11. The United States has provided notice of the commencement of this action to the LDEQ and the FDEP as required by Clean Air Act Section 113(b), 42 U.S.C. § 7413(b).

### **THE DEFENDANTS**

12. PCS is a partnership domiciled in the State of Delaware and registered to do business in the State of Louisiana.

13. AA Sulfuric is a Louisiana corporation that does business in the State of Louisiana.

14. White Springs is a Delaware corporation that does business in the State of Florida.

15. At all times relevant to this Complaint, PCS has operated the Geismar Facility, which is part of the Geismar Agricultural Nitrogen & Phosphate Plant located in Ascension and Iberville Parishes, Louisiana.

16. At all times relevant to this Complaint, AA Sulfuric has owned the Geismar Facility.

17. At all times relevant to this Complaint, White Springs has owned and operated the White Springs Facility located in Hamilton County, Florida at 15843 S.E. 78<sup>th</sup> Street.

18. PCS, AA Sulfuric, and White Springs are “persons” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), and the applicable federal and state regulations.

#### **STATUTORY AND REGULATORY BACKGROUND**

19. The Clean Air Act is designed to protect and enhance the quality of the nation’s air so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

#### **The National Ambient Air Quality Standards**

20. Clean Air Act Section 108(a), 42 U.S.C. § 7408(a), requires the EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such “criteria pollutant,” Clean Air Act Section 109, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (“NAAQS”) requisite to protect the public health and welfare with an adequate margin of safety.

21. Pursuant to Clean Air Act Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, EPA has identified SO<sub>2</sub> as a criteria pollutant, and has promulgated NAAQS for it. 40 C.F.R.

§§ 50.4 (primary NAAQS) and 50.5 (secondary NAAQS).

22. Under Clean Air Act Section 107(d), 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is deemed an “attainment” area. An area that does not meet the NAAQS is deemed a “nonattainment” area. An area that cannot be classified due to insufficient data is designated as “unclassifiable.”

23. Clean Air Act Section 110, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the attainment and maintenance of the NAAQS within the state.

24. The State of Louisiana has adopted a SIP that has been approved by EPA. 40 C.F.R. Part 52, Subpart T. At all times relevant to this Complaint, Ascension and Iberville Parishes in Louisiana have been in attainment for SO<sub>2</sub>.

25. The State of Florida has adopted a SIP that has been approved by EPA. 40 C.F.R. Part 52, Subpart K. At all times relevant to this Complaint, Hamilton County, Florida has been in attainment for SO<sub>2</sub>.

#### **The Prevention of Significant Deterioration Requirements**

26. Part C of Title I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration (“PSD”) of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful

evaluation of all the consequences of such a decision and after public participation in the decision making process. *See* 42 U.S.C. § 7470. These provisions are referred to as the Clean Air Act's "PSD Program."

27. Clean Air Act Section 165(a), 42 U.S.C. § 7475(a), and the implementing PSD regulations, prohibit the construction, major modification, and subsequent operation of a "major emitting facility" in an area designated as attainment or unclassifiable unless a permit (a "PSD Permit") has been issued setting forth BACT emission limitations and other requirements for such facility that conform to the PSD requirements. 40 C.F.R. §§ 52.21(i) and (r), and 52.23 (1995); Louisiana Administrative Code ("LAC") Title 33, Part III, Chapter 5, Sections 501(C) and 509(I) and (R); Florida Administrative Code ("FAC") Title 62, Part 1, Chapter 210, Sections 200, 300, and Chapter 212, Section 400 (formerly Chapter 17 of the FAC).

28. Clean Air Act Section 169(2)(C), 42 U.S.C. § 7479(2)(C) defines "construction" to include the "modification" (as defined in Clean Air Act Section 111(a), 42 U.S.C. § 7411(a)) of any source or facility.

29. The PSD regulations define "construction" as "any physical change in or change in the method of operation (including fabrication, erection, installation, demolition, or modification) which would result in a change in actual emissions." 40 C.F.R. § 52.21(b)(8) (1995); LAC 33:III:509(B); FAC 62-210.200.

30. Clean Air Act Section 111(a), 42 U.S.C. § 7411(a), defines "modification" as "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." 42 U.S.C. § 7411(a)(4).

31. The PSD regulations define “major modification” as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Clean Air Act. 40 C.F.R. § 52.21(b)(2)(i) (1995); LAC 33:III.509.B; FAC 62-210.200.

32. A “significant” net emissions increase means, with respect to SO<sub>2</sub>, an increase in emissions equal to or exceeding 40 tons per year (TPY). 40 C.F.R. § 52.21(b)(23)(i) (1995); LAC 33:III.509.B; FAC 62-210.200.

33. “Net emissions increase” is defined as “the amount by which the sum of the following exceeds zero: (a) [a]ny increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and (b) [a]ny other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.” 40 C.F.R. § 52.21(b)(3)(i) (1995); LAC 33:III.509.B; FAC 62-210.200.

34. The PSD regulations define “actual emissions” as the average rate, in tons per year, at which an emission unit “actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation.” 40 C.F.R. § 52.21(b)(21)(i)-(ii); LAC 33:III.509.B; FAC 62-210.200(11). In addition, for any emissions unit that “has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.” 40 C.F.R. § 52.21(b)(21)(iv); LAC 33:III.509.B; FAC 62-210.200.

35. A PSD Permit must be obtained prior to constructing a major modification at a major stationary source. 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21(i) (1995 – 2002); 40 C.F.R.

§ 52.21(a)(2)(iii) (2003 – 2014); LAC 33:III.501.C, 509.I; 517.A; FAC 62-212.300 and 62-212.400.

36. Among other things, a PSD Permit requires the owner and/or operator to comply with the “best available control technology” (“BACT”) which the Act defines as “an *emission limitation* based on the maximum degree of reduction of each pollutant subject to regulation... which the permitting authority, on a case by case-by-case basis...determines is achievable for such facility.” 42 U.S.C. § 7479(3) (emphasis added), 40 C.F.R. § 52.21(b)(12), LAC 33:III.509.B, and FAC 62-210.200.

37. In order to facilitate the issuance of an appropriate and accurate PSD Permit, the owner and/or operator of a major modification must submit all information necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21. 40 C.F.R. § 52.21(n); LAC 33:III.509.N; FAC 62-212.400.

38. Clean Air Act Sections 110(a) and 161, 42 U.S.C. §§ 7410(a) and 7471, require that each state adopt a SIP containing a PSD Program.

39. States may comply with Clean Air Act Sections 110(a) and 161, 42 U.S.C. §§ 7410(a) and 7471, by having their own PSD regulations (which must be at least as stringent as the federal requirements set forth at 40 C.F.R. § 51.166) approved by EPA as part of a SIP, or by having EPA delegate its authority to the state to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21.

#### **The Louisiana SIP**

40. EPA has approved both Louisiana’s original SIP (52 Fed. Reg. 13,671 (Apr. 24, 1987) (effective May 26, 1987)), and subsequent revisions to the Louisiana PSD program (40 C.F.R. §§ 52.970 and 52.999(c)).



41. The Louisiana PSD program is found at LAC 33:III.509, and mirrors the federal PSD regulations. Pursuant to its PSD program, the State of Louisiana issues permits governing the operation and construction of regulated sources. *See* LAC 33:III.501.

42. EPA may enforce violations of Louisiana's federally approved PSD program pursuant to Clean Air Act Section 113(b), 42 U.S.C. § 7413(b), and 40 C.F.R. § 52.23.

### **The Florida SIP**

43. EPA approved Florida's original SIP (48 Fed. Reg. 52,713 (Dec. 22, 1983)), codified in Chapter 17-2 (48 Fed. Reg. 52,713), and subsequent revisions to the Florida PSD program. *See* 40 C.F.R. Part 52, Subpart K.

44. Florida's SIP provisions were re-codified and relocated from Chapter 17 to Chapter 62-210 and 62-212, effective August 16, 1999. 64 Fed. Reg. 32,346. All citations herein to the FAC refer to the regulations adopted and approved as part of the Florida SIP applicable at the time of each modification alleged below.

45. The relevant Florida PSD and general permitting regulations formerly found in Chapters 17-210 (Stationary Sources General Requirements) and 17-212 (Stationary Sources Preconstruction Review), and which are now found at 62-210 (Stationary Sources General Requirements) and 62-212 (Stationary Sources Preconstruction Review), were incorporated into the Florida SIP at the time of the modifications at issue in this case.

46. The Florida PSD program is found at FAC 62-212.400, and mirrors the federal PSD regulations. Pursuant to its PSD program, the State of Florida issues permits governing the operation and construction of regulated sources. *See* FAC 62-212 and 62-210.

47. EPA may enforce violations of Florida's federally approved PSD program pursuant to Clean Air Act Section 113(b), 42 U.S.C. § 7413(b), and 40 C.F.R. § 52.23.

**Title V Operating Permits**

48. Title V of the Clean Air Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including “major sources” and any source required to have a PSD Permit. 42 U.S.C. § 7661a(a); *see also* LAC 33:III.501 and 507.A.1; FAC 62-213.400.

49. The purpose of Title V is to ensure that all “applicable requirements” governing a facility’s compliance with the Clean Air Act, including PSD requirements, are consolidated and expressed in one document.

50. Pursuant to Clean Air Act Section 502(b), 42 U.S.C. § 7661a(b), EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a Title V permit program to be administered by state or local air pollution control agencies. 57 Fed. Reg. 32,250 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

51. EPA has approved Louisiana’s Title V air operating permit program. 60 Fed. Reg. 47,296-97 (Sept. 12, 1995) (effective October 12, 1995); 40 C.F.R. Part 70 Appendix A. The regulations governing Louisiana’s Title V air operating permit program are set forth at LAC Title 33, Part III, Chapter 5 (“Permit Procedures”).

52. EPA has approved Florida’s Title V air operating permit program. 60 Fed. Reg. 49,343 (Sept. 25, 1995) (effective October 25, 1995); 40 C.F.R. Part 70, Appendix A. The regulations governing Florida’s Title V air operating permit program are set forth at FAC Title 62-213 (“Operation Permits for Major Sources of Air Pollution”).

53. Clean Air Act Section 502(a), 42 U.S.C. § 7661a(a), and implementing regulations, 40 C.F.R. §§ 70.1(b) and 70.7(b), have at all relevant times made it unlawful for major sources to violate any requirement of a permit issued under Title V or to operate a major

source except in compliance with a permit issued by a permitting authority under Title V that assures compliance with “all applicable requirements” of the Clean Air Act. *See also* LAC 33:III.501.C and 507.B; and FAC 62-213.400.

54. Clean Air Act Section 504(a), 42 U.S.C. § 7661c(a) and implementing regulations, 40 C.F.R. § 70.6(a), have at all relevant times required that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with “applicable requirements” of the Clean Air Act and the requirements of the relevant SIP. *See also* LAC 33:III.501.C and 507.A.3; FAC 62-213.440. “Applicable requirements” are defined to include any relevant PSD requirements. 40 C.F.R. § 70.2; *see also* LAC 33:III.502 (defining “Federally Applicable Requirement”); FAC 62-210.200 (same).

55. Under Louisiana’s operating permit program, no construction, modification, or operation of a facility that ultimately may result in an initiation or increase in emissions may begin until a Title V permit has been approved and issued by LDEQ. LAC 33:III.501.C, 507.B.2, and 517.A. Any such permit issued must incorporate all federally applicable requirements. *See* LAC 33:III.501.C, 507.A.3, and 507.B.2.

56. Under Florida’s operating permit program, no construction, modification, or operation of a facility that ultimately may result in an initiation or increase in emissions may begin until a Title V permit revision has been approved and issued by the FDEP. FAC 62-213.400. The rules governing these permits parallel the federal requirements. FAC 62-213.400 and 62-213.420(1).

57. Clean Air Act Section 503(b), 42 U.S.C. § 7661b(b), and implementing regulations, 40 C.F.R. §§ 70.5(a)(2) and (c), provide that any person required to have a Title V

permit must submit, among other things as part of its permit application, a compliance plan to the permitting authority that describes how the source will comply or come into compliance with each applicable requirement of the Clean Air Act. *See also* LAC 33:III.501.C, 507.H, and 517.D and E; FAC 62-213.420.

58. In addition, the Title V permit application must contain information sufficient to evaluate the subject source, to evaluate its application, and to determine all applicable requirements (including PSD requirements). 40 C.F.R. § 70.5(a); LAC 33:III.501.C, 507.H, and 517.B, D, and E; FAC 62-213.420. The permit application must also contain a certification of compliance with all applicable requirements, and information that may be necessary to determine the applicability of other applicable Clean Air Act requirements. *Id.*

59. Title V permit applicants are required to submit supplemental facts or corrected information as necessary to the permitting authority after submitting an initial application that contains incomplete or incorrect information. 40 C.F.R. § 70.5(b); LAC 33:III.501.C, and 517(C); FAC 62-213.420(1).

#### **Clean Air Act Enforcement Provisions**

60. Clean Air Act Sections 113(a)(1) and (a)(3), 42 U.S.C. §§ 7413(a)(1) and (a)(3), provide that the EPA may bring a civil action in accordance with Clean Air Act Section 113(b), 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the EPA, the EPA finds that any person has violated or is in violation of, *inter alia*, any requirement or prohibition of: (a) the Clean Air Act PSD requirements in Section 165(a), 42 U.S.C. § 7475(a), or PSD implementing regulations; (b) Title V of the Clean Air Act, 42 U.S.C. §§ 7661-7661f, or any regulation, rule, or permit issued thereunder; and/or (c) the Louisiana or Florida SIPs or any regulation, rule, or permit issued thereunder. *See also* 40 C.F.R. § 52.23.

61. Clean Air Act Section 113(b), 42 U.S.C. § 7413(b), authorizes the EPA to initiate a judicial enforcement action for a permanent or temporary injunction to address Clean Air Act violations, as well as to seek civil penalties of up to \$25,000 per day for each violation occurring on or before January 30, 1997; up to \$27,500 per day for each violation occurring after January 31, 1997 through March 15, 2004; up to \$32,500 per day for each violation occurring on or after March 16, 2004 through January 12, 2009; and up to \$37,500 per day for each violation occurring after January 13, 2009. *See* Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; 40 C.F.R. § 19.4.

62. La. R.S. 30:2025(E)(1)(a) authorizes civil penalties “of not more than the cost to the state of any response action made necessary by such violation which is not voluntarily paid by the violator, and a penalty of not more than [\$32,500] for each day of violation. However, when any such violation is done intentionally, willfully, or knowingly, or results in a discharge or disposal which causes irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health, such person may be liable for an additional penalty of not more than [\$1,000,000].” Further, LDEQ is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, i.e., when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right. *Jurisich v. Jenkins*, 749 So. 2d 597 (La. 1999).

### **GENERAL ALLEGATIONS**

#### **The Geismar Sulfuric Acid Facility**

63. At all times relevant to this Complaint, the Geismar Facility has emitted or had the potential to emit at least 100 TPY of SO<sub>2</sub>.

64. At all times relevant to this Complaint, the Geismar Facility has been a major emitting facility, as defined by Clean Air Act Section 169(1), 42 U.S.C. § 7479(1), a major stationary source, as defined by 40 C.F.R. § 52.21(b)(1)(i)(a) (1995) and LAC 33:III.509.B, and a major source, as defined by 42 U.S.C. § 7661(2), 40 C.F.R. § 70.2, and LAC 33:III.502.

65. At all times relevant to this Complaint, the Geismar Facility has been subject to the Title V permitting requirements in 40 C.F.R. Part 70 and the Louisiana SIP.

**The White Springs Sulfuric Acid Facility**

66. At all times relevant to this Complaint, each of the four sulfuric acid production plants at the White Springs Facility (Plants C, D, E, and F) has emitted or had the potential to emit at least 100 TPY of SO<sub>2</sub>.

67. At all times relevant to this Complaint, each of the four sulfuric acid production plants at the White Springs Facility has been a major emitting facility, as defined by Clean Air Act Section 169(1), 42 U.S.C. § 7479(1), and FAC 62-210.200, a major stationary source, as defined by 40 C.F.R. § 52.21(b)(1)(i)(a), and a major source, as defined by 42 U.S.C. § 7661(2), 40 C.F.R. § 70.2, and 62-210.200.

68. At all times relevant to this Complaint, the White Springs Facility has been subject to the Title V permitting requirements in 40 C.F.R. Part 70 and the Florida SIP.

**“Pressure Drop”**

69. Each major component of a sulfuric acid manufacturing process causes “pressure drop” (the amount of resistance to flow moving through the component).

70. Decreasing the pressure drop across the sulfuric acid manufacturing process decreases the amount of frictional resistance encountered by the fluids and gases moving through the process.

71. Decreasing the pressure drop across the sulfuric manufacturing process also allows for the increased flow of air and process gases through the sulfuric acid manufacturing process. The increased flow of air and process gases allows for more efficient and increased sulfuric acid production (“throughput”) as well as an increased rate of SO<sub>2</sub> emissions.

**FIRST CLAIM FOR RELIEF**

(PSD Violations – Geismar Facility)

72. Paragraphs 1 through 71 are re-alleged and incorporated by reference.

73. In or about October 1995, PCS and AA Sulfuric commenced construction of a capital project to install a new sulfuric acid converter unit at the Geismar Facility (the “Converter Project”).

74. The Converter Project constituted a “major modification” within the meaning of the Clean Air Act and the Louisiana SIP. 40 C.F.R. § 52.21(b)(2)(i), (b)(3), and (b)(21); LAC 33:III.509.B.

75. The new sulfuric acid converter unit installed as part of the Converter Project had a larger capacity and larger diameter than the original converter.

76. As part of the Converter Project, the original ductwork attached to the converter, as well as ductwork attached to a waste heat boiler, were replaced with new ductwork.

77. The Converter Project was not a “replacement-in-kind” of the original converter.

78. The Converter Project undertaken by PCS and AA Sulfuric constituted a physical change(s) and/or change(s) in the method of operation to the Geismar Facility within the meaning of the Clean Air Act and the Louisiana SIP. 40 C.F.R. § 52.21(b)(2)(i); LAC 33:III.509.B.

79. Subject to a reasonable opportunity for further investigation and discovery, by increasing the size and diameter of the converter, the Converter Project enabled PCS and AA Sulfuric to decrease the pressure drop across the sulfuric acid manufacturing process.

80. Subject to a reasonable opportunity for further investigation and discovery, by decreasing the pressure drop across PCS' and AA Sulfuric's sulfuric manufacturing process and the converter, the frictional force on the fluids and gases moving through the converter was reduced (as compared to the old converter) and allowed for the increased flow of air and process gases through the sulfuric acid manufacturing process. The increased flow of air and process gases through PCS' and AA Sulfuric's sulfuric acid manufacturing process allowed for more efficient and increased sulfuric acid production ("throughput") as well as an increased rate of SO<sub>2</sub> emissions from the Geismar Facility.

81. As a result of these physical changes and/or changes in the method of operation, the sulfuric acid production capacity of the Geismar Facility increased.

82. By increasing sulfuric acid production capacity at the Geismar Facility, the physical change(s) and/or change(s) in the method of operation performed as part of the Converter Project resulted in a significant net emission increase of SO<sub>2</sub>.

83. At the time of commencing construction of the Converter Project, the Geismar Facility had not begun normal operations.

84. PCS and AA Sulfuric never applied for or received a PSD permit prior to commencing construction and operation of the Converter Project.

85. To date, PCS and AA Sulfuric continue to own and/or operate the Geismar Facility without having applied for or received a PSD permit.



86. Since commencing construction of the Converter Project at the Geismar Facility, PCS and AA Sulfuric have failed to comply with, and have been in violation of, the PSD requirements of the Clean Air Act and the Louisiana SIP, including Clean Air Act Section 165(a), 42 U.S.C. § 7475(a), the PSD regulations set forth in 40 C.F.R. §§ 52.21(i) – (o) and (r) and 52.23 (1995), and LAC 33:III.501.C and 509.I – O and R.

87. Unless restrained by an order of this Court, the Clean Air Act violations alleged in this Claim for Relief will continue.

88. As provided in Clean Air Act Sections 113(b), 42 U.S.C. § 7413(b), the violations set forth above subject PCS and AA Sulfuric to injunctive relief and civil penalties. *See also* 40 C.F.R. § 19.4. PCS and AA Sulfuric are also liable for injunctive relief and civil penalties pursuant to La. R.S. 30:2025(E)(1)(a).

### **SECOND CLAIM FOR RELIEF**

(Title V Violations – Geismar Facility)

89. Paragraphs 1 through 88 are re-alleged and incorporated by reference.

90. As alleged above, PCS' and AA Sulfuric's Converter Project at the Geismar Facility constituted a major modification, triggering the Title V requirements to, among other things, obtain a PSD permit establishing emissions limitations that meet BACT and to operate in compliance with BACT. PCS and AA Sulfuric failed to comply with these applicable requirements. 40 C.F.R. § 70.2; LAC 33:III.502.

91. Since commencing construction of the Converter Project, PCS and AA Sulfuric have owned and/or operated the Geismar Facility without applying for or receiving a complete and adequate Title V operating permit containing all applicable requirements.

92. In October 1996, PCS submitted an application for a Title V operating permit for the Geismar Facility to LDEQ. However, the application was not complete and, to date, PCS has failed to submit a timely and complete Title V permit application that, *inter alia*, identifies all applicable requirements (such as PSD requirements), accurately certifies compliance with such requirements, contains a compliance plan for all applicable requirements for which the Geismar Facility is not in compliance (including the requirement to comply with BACT emissions limits pursuant to a new BACT determination under the PSD Regulations), and contains other specific information that may be necessary to implement and enforce the applicable requirements of the Clean Air Act and the Louisiana SIP, or to determine the applicability of such requirements.

93. To date, PCS and AA Sulfuric have never submitted supplemental facts or corrected information to LDEQ as necessary after submitting its incomplete Title V permit application. 40 C.F.R. § 70.5(b); LAC 33:III.501.C, and 517.C.

94. As a result of its actions and omissions, PCS and AA Sulfuric have violated and continue to violate Clean Air Act Sections 502(a), 503(c), and 504(a), 42 U.S.C. §§ 7661a(a), 7661b(c), and 7661c(a), 40 C.F.R. §§ 70.1(b), 70.5, 70.6, and 70.7(b), and the Louisiana SIP requirements at LAC 33:III.501.C, 507, 509.I and R, and 517.

95. Unless restrained by an order of this Court, the Clean Air Act violations alleged in this Claim for Relief will continue.

96. As provided in Clean Air Act Section 113(b), 42 U.S.C. § 7413(b), the violations set forth above subject PCS and AA Sulfuric to injunctive relief and civil penalties. *See also* 40 C.F.R. § 19.4. PCS and AA Sulfuric are also liable for injunctive relief and civil penalties pursuant to La. R.S. 30:2025(E)(1)(a).

**THIRD CLAIM FOR RELIEF**

(PSD Violations – White Springs Facility (Plant C))

97. Paragraphs 1 through 71 are re-alleged and incorporated by reference.

98. In or about April 2000, White Springs commenced construction of a capital project to install a new heat exchanger in Plant C at the White Springs Facility (“Plant C Heat Exchanger Project”).

99. Subject to a reasonable opportunity for further investigation and discovery, the new heat exchanger installed as part of the Plant C Heat Exchanger Project decreased pressure drop across the manufacturing process, and increased the heat exchanger’s efficiency and plant production capacity.

100. In or about December 2003, White Springs commenced construction of a capital project to install a new primary super-heater in Plant C at the White Springs Facility (“Plant C Primary Super-heater Project”).

101. Subject to a reasonable opportunity for further investigation and discovery, the new primary super-heater installed as part of the Plant C Primary Super-heater Project decreased pressure drop across the manufacturing process, and increased the heat exchanger’s efficiency and plant production capacity.

102. In or about June 2008, White Springs commenced construction of a capital project to install a new higher-efficiency absorption tower in Plant C at the White Springs Facility (“Plant C Absorption Tower Project”).

103. Subject to a reasonable opportunity for further investigation and discovery, the Plant C Absorption Tower Project was intended to decrease pressure drop, which increased plant production capacity.

104. Each of the projects described above that took place at White Springs Plant C constituted “major modifications” within the meaning of the Clean Air Act and the Florida SIP. 40 C.F.R. § 52.21(b)(2)(i), (b)(3), and (b)(21); FAC 62-210.200.

105. Each of the projects undertaken by White Springs at Plant C constituted physical change(s) and/or change(s) in the method of operation to the White Springs Facility within the meaning of the Clean Air Act and the Florida SIP. 40 C.F.R. § 52.21(b)(2)(i); FAC 62-210.200.

106. Subject to a reasonable opportunity for further investigation and discovery, as a result of these physical changes and/or changes in the method of operation, Plant C at the White Springs Facility increased sulfuric acid production and the capacity to emit SO<sub>2</sub>.

107. Subject to a reasonable opportunity for further investigation and discovery, by increasing sulfuric acid production capacity at Plant C of the White Springs Facility, the physical change(s) and/or change(s) in the method of operation described above resulted in a significant net emission increase of SO<sub>2</sub>.

108. At the time of commencing construction of these projects at Plant C, Plant C at the White Springs Facility had not begun normal operations.

109. White Springs never applied for or received a PSD permit prior to commencing construction and operation of the projects at Plant C.

110. To date, White Springs continues to own and/or operate the White Springs Facility without having applied for or received a PSD permit.

111. Since commencing construction of the projects at Plant C at the White Springs Facility, White Springs has failed to comply with, and has been in violation of, the PSD requirements of the Clean Air Act and the Florida SIP, including Clean Air Act Section 165(a), 42 U.S.C. § 7475(a), the PSD regulations set forth in 40 C.F.R. § 52.21(i) (2000 – 2002), 40

C.F.R. §§ 52.21(a)(2)(iii) and (j) – (r) (2003 – 2014), and 40 C.F.R. § 52.23, FAC 62-212.400(1)(a), and 62-212.400(4)(b) - (e) (or the corresponding former provisions of FAC Chapter 17).

112. Unless restrained by an order of this Court, the Clean Air Act violations alleged in this Claim for Relief will continue.

113. As provided in Clean Air Act Sections 113(b), 42 U.S.C. § 7413(b), the violations set forth above subject White Springs to injunctive relief and civil penalties. *See also* 40 C.F.R. § 19.4.

#### **FOURTH CLAIM FOR RELIEF**

(PSD Violations – White Springs Facility (Plant D))

114. Paragraphs 1 through 71 are re-alleged and incorporated by reference.

115. In or about March 1996, White Springs commenced construction of a capital project to install a new heat exchanger in Plant D at the White Springs Facility (“Plant D Heat Exchanger Project”).

116. The new heat exchanger had a new design and operated at a higher efficiency than the model it replaced, which had deteriorated significantly.

117. In or about January 2003, White Springs commenced construction of a capital project to install a new waste heat boiler in Plant D at the White Springs Facility (“Plant D Waste Heat Boiler Project”).

118. In or about January 2004, White Springs commenced construction of a capital project to install a new drying tower in Plant D at the White Springs Facility (“Plant D Drying Tower Project”).

119. Subject to a reasonable opportunity for further investigation and discovery, each of these modifications was intended to decrease pressure drop, which increased the plant's efficiency and production.

120. Each of these projects at Plant D constituted "major modifications" within the meaning of the Clean Air Act and the Florida SIP. 40 C.F.R. § 52.21(b)(2)(i), (b)(3), and (b)(21); FAC 62-210.200.

121. Each of these projects undertaken by White Springs at Plant D constituted physical change(s) and/or change(s) in the method of operation to the White Springs Facility within the meaning of the Clean Air Act and the Florida SIP. 40 C.F.R. § 52.21(b)(2)(i); FAC 62-210.200.

122. Subject to a reasonable opportunity for further investigation and discovery, as a result of these physical changes and/or changes in the method of operation, the White Springs Facility increased sulfuric acid production and the capacity to emit SO<sub>2</sub>.

123. Subject to a reasonable opportunity for further investigation and discovery, by increasing sulfuric acid production capacity at the White Springs Facility, the physical change(s) and/or change(s) in the method of operation performed as part of the projects at Plant D resulted in a significant net emission increase of SO<sub>2</sub>.

124. At the time of the projects at Plant D, Plant D at the White Springs Facility had not begun normal operations.

125. White Springs never applied for or received a PSD permit prior to commencing construction and operation of the projects at Plant D.

126. To date, White Springs continues to own and/or operate the White Springs Facility without having applied for or received a PSD permit.

127. Since completing the projects at Plant D at the White Springs Facility, White Springs has failed to comply with, and has been in violation of, the PSD requirements of the Clean Air Act and the Florida SIP, including Clean Air Act Section 165(a), 42 U.S.C. § 7475(a), the PSD regulations set forth in 40 C.F.R. § 52.21(i) (1996 – 2002), 40 C.F.R. §§ 52.21(a)(2)(iii) and (j) – (r) (2003 – 2014), and 40 C.F.R. § 52.23, FAC 62-212.400(1)(a), and 62-212.400(4)(b) - (e) (or the corresponding former provisions of FAC Chapter 17).

128. Unless restrained by an order of this Court, the Clean Air Act violations alleged in this Claim for Relief will continue.

129. As provided in Clean Air Act Sections 113(b), 42 U.S.C. § 7413(b), the violations set forth above subject White Springs to injunctive relief and civil penalties. *See also* 40 C.F.R. § 19.4.

#### **FIFTH CLAIM FOR RELIEF**

(PSD Violations – White Springs Facility (Plant E))

130. Paragraphs 1 through 71 are re-alleged and incorporated by reference.

131. In or about December 2002, White Springs commenced construction (began actual construction) of a capital project to install a new superheater in Plant E at the White Springs Facility (the “Plant E Superheater Project”).

132. Subject to a reasonable opportunity for further investigation and discovery, the Plant E Superheater Project constituted a “major modification” within the meaning of the Clean Air Act and the Florida SIP. 40 C.F.R. § 52.21(b)(2)(i), (b)(3), and (b)(21); FAC 62-210.200.

133. Subject to a reasonable opportunity for further investigation and discovery, the Plant E Superheater Project undertaken by White Springs constituted a physical change(s) and/or

change(s) in the method of operation to the White Springs Facility within the meaning of the Clean Air Act and the Florida SIP. 40 C.F.R. § 52.21(b)(2)(i); FAC 62-210.200.

134. Subject to a reasonable opportunity for further investigation and discovery, as a result of these physical changes and/or changes in the method of operation, the White Springs Facility increased sulfuric acid production and capacity to emit SO<sub>2</sub>.

135. Subject to a reasonable opportunity for further investigation and discovery, by increasing sulfuric acid production capacity at the White Springs Facility, the physical change(s) and/or change(s) in the method of operation performed as part of the Plant E Superheater Project resulted in a significant net emission increase of SO<sub>2</sub>.

136. Subject to a reasonable opportunity for further investigation and discovery, at the time of the Plant E Superheater Project, Plant E had not begun normal operations.

137. White Springs never applied for or received a PSD permit prior to commencing construction (beginning actual construction) and operation of the Plant E Superheater Project.

138. To date, White Springs continues to own and/or operate the White Springs Facility without having applied for or received a PSD permit.

139. Subject to a reasonable opportunity for further investigation and discovery, since completing the Plant E Superheater Project at the White Springs Facility, White Springs has failed to comply with, and has been in violation of the PSD requirements of the Clean Air Act and the Florida SIP, including Clean Air Act Section 165(a), 42 U.S.C. § 7475(a), the PSD regulations set forth in 40 C.F.R. §§ 52.21(i) – (o) and (r), and 52.23, FAC 62-212.400(1)(a), and 62-212.400(4)(b) - (e) (or the corresponding former provisions of FAC Chapter 17).



140. Subject to a reasonable opportunity for further investigation and discovery, unless restrained by an order of this Court, the Clean Air Act violations alleged in this Claim for Relief will continue.

141. Subject to a reasonable opportunity for further investigation and discovery, as provided in Clean Air Act Sections 113(b), 42 U.S.C. § 7413(b), the violations set forth above subject White Springs to injunctive relief and civil penalties. *See also* 40 C.F.R. § 19.4.

### **SIXTH CLAIM FOR RELIEF**

(PSD Violations – White Springs Facility (Plant F))

142. Paragraphs 1 through 71 are re-alleged and incorporated by reference.

143. In or about September 1999, White Springs commenced construction of a capital project to install a new hot heat exchanger in Plant F at the White Springs Facility (“Plant F Hot Heat Exchanger Project”).

144. The Plant F Hot Heat Exchanger Project constituted a “major modification” within the meaning of the Clean Air Act and the Florida SIP. 40 C.F.R. § 52.21(b)(2)(i), (b)(3), and (b)(21); FAC 62-210.200.

145. The new hot heat exchanger had a new design and operated at a higher efficiency than the model it replaced, which had deteriorated significantly.

146. Subject to a reasonable opportunity for further investigation and discovery, these modifications were intended to decrease pressure drop, which increased the plant’s efficiency and production capacity.

147. The Plant F Hot Heat Exchanger Project undertaken by White Springs constituted a physical change(s) and/or change(s) in the method of operation to the White Springs Facility

within the meaning of the Clean Air Act and the Florida SIP. 40 C.F.R. § 52.21(b)(2)(i); FAC 62-210.200.

148. Subject to a reasonable opportunity for further investigation and discovery, as a result of these physical changes and/or changes in the method of operation, the White Springs Facility increased sulfuric acid production and capacity to emit SO<sub>2</sub>.

149. Subject to a reasonable opportunity for further investigation and discovery, by increasing sulfuric acid production capacity at the White Springs Facility, the physical change(s) and/or change(s) in the method of operation performed as part of the project at Plant F resulted in a significant net emission increase of SO<sub>2</sub>.

150. At the time of the Plant F Hot Heat Exchanger Project, Plant F at the White Springs Facility had not begun normal operations.

151. White Springs never applied for or received a PSD permit prior to commencing construction and operation of the projects at Plant F.

152. To date, White Springs continue to own and/or operate the White Springs Facility without having applied for or received a PSD permit.

153. Since completing the Plant F Hot Heat Exchanger Project at the White Springs Facility, White Springs has failed to comply with, and has been in violation of the PSD requirements of the Clean Air Act and the Florida SIP, including Clean Air Act Section 165(a), 42 U.S.C. § 7475(a), the PSD regulations set forth in 40 C.F.R. §§ 52.21(i) – (o) and (r) (1999), and 52.23, FAC 62-212.400(1)(a), and 62-212.400(4)(b) - (e) (or the corresponding former provisions of FAC Chapter 17).

154. Unless restrained by an order of this Court, the Clean Air Act violations alleged in this Claim for Relief will continue.

155. As provided in Clean Air Act Sections 113(b), 42 U.S.C. § 7413(b), the violations set forth above subject White Springs to injunctive relief and civil penalties. *See* 40 C.F.R. § 19.4.

**SEVENTH CLAIM FOR RELIEF**

(Title V Violations – White Spring Facility (Plants C, D, E, and F))

156. Paragraphs 1 through 71 and 98 through 155 are re-alleged and incorporated by reference.

157. As alleged above, White Springs' projects at Plants C, D, E, and F at the White Springs Facility constituted major modifications, triggering the Title V requirements to, among other things, obtain a PSD permit establishing emissions limitations that meet BACT and to operate in compliance with BACT. White Springs failed to comply with these applicable requirements as required by: 40 C.F.R. § 70.2; FAC 17-210.300(1) and 62-210.300(1); FAC 17-212.400(5)(a)2 and 62-213.400(5)(a)(2).

158. Since the projects at Plants C, D, E, and F, White Springs has owned and/or operated these plants at the White Springs Facility without applying for or receiving a complete and adequate Title V operating permit containing all applicable requirements. FAC 17-210.300 and 62-210.300; FAC 17-12.400(6)(b) and 62-213.400(7)(b).

159. Since 1996, White Springs has failed to submit a timely and complete Title V permit application for the projects in Plants C, D, E, and F at the White Springs Facility that, *inter alia*, identifies all applicable requirements (such as PSD requirements), accurately certifies compliance with such requirements, contains a compliance plan for all applicable requirements for which the White Springs Facility is not in compliance (including the requirement to install and operate BACT pursuant to a new BACT determination under the PSD Regulations), and

contains other specific information that may be necessary to implement and enforce the applicable requirements of the Clean Air Act and the Florida SIP, or to determine the applicability of such requirements.

160. To date, White Springs has never submitted supplemental facts or corrected information to FDEP as necessary after submitting its incomplete Title V permit application as required by 40 C.F.R. § 70.5(b); FAC 17-213.400 and 62-213.400; FAC 17-213.420 and 62-213.420; and FAC 17-213.440 and 62-213.440.

161. As a result of its actions and omissions, White Springs has violated and continues to violate Clean Air Act Sections 502(a), 503(c), and 504(a), 42 U.S.C. §§ 7661a(a), 7661b(c), and 7661c(a), 40 C.F.R. §§ 70.1(b), 70.5, 70.6, and 70.7(b), and the Florida SIP requirements at FAC 17-213.400 and 62-213.400; FAC 17-213.420 and 62-213.420; and FAC 17-213.440 and 62-213.440.

162. Unless restrained by an order of this Court, the Clean Air Act violations alleged in this Claim for Relief will continue.

163. As provided in Clean Air Act Section 113(b), 42 U.S.C. § 7413(b), the violations set forth above subject White Springs to injunctive relief and civil penalties. *See also* 40 C.F.R. § 19.4.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, the United States of America and the Louisiana Department of Environmental Quality respectfully request that this Court:

1. Enter judgment in favor of the United States and the Louisiana Department of Environmental Quality and against the Defendants, PCS Nitrogen Fertilizer, L.P., AA Sulfuric Corporation, and White Springs Agricultural Chemicals, Inc.;

2. Permanently enjoin the Defendants from operating the Geismar Facility and Plants C, D, E, F at the White Springs Facility, including the construction of future modifications, except in accordance with the Clean Air Act and applicable regulatory requirements, including the Florida and Louisiana SIPs;
3. Order the Defendants to install any necessary pollution control technology and comply with BACT emission limitations for SO<sub>2</sub> at the Geismar Facility and Plants C, D, E, F at the White Springs Facility;
4. Order the Defendants to take appropriate measures to mitigate and remedy the effects of their violations by, among other things, requiring the Defendants to address or offset its unlawful emissions of SO<sub>2</sub>;
5. Order the Defendants to apply for Title V operating permits that conform with the requirements of the Clean Air Act and the Florida and Louisiana SIPs;
6. Assess a civil penalty against the Defendants of up to \$25,000 per day for each violation occurring on or before January 30, 1997; up to \$27,500 per day for each violation occurring after January 31, 1997 through March 15, 2004; up to \$32,500 per day for each violation occurring on or after March 16, 2004 through January 12, 2009; and up to \$37,500 per day for each violation occurring after January 13, 2009;
7. Award the United States and the Louisiana Department of Environmental Quality their costs and expenses incurred in this action; and
8. Grant the United States and the Louisiana Department of Environmental Quality any further and other relief that this Court may deem appropriate.

Respectfully submitted,



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